

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA

v.

RYAN DACRUZ

:
:
:
:
:

CR No. 23-52-WES-PAS

MEMORANDUM AND ORDER

PATRICIA A. SULLIVAN, United States Magistrate Judge.

On June 12, 2023, following an extended hearing, the Court entered an Order of Detention based on the finding that no conditions or combination of conditions had yet been found that would adequately address the danger that the release of Defendant Ryan DaCruz would pose to any person or the community. ECF No. 15. Nevertheless, the Court also found that it remained possible that a location for release could be found that would adequately address the risk, [REDACTED] coupled with strict conditions calibrated to enforce what Defendant had argued – that the evidence of his active engagement in acts of gang provocation triggering gang violence was from the period prior to his 2022 felony convictions. Therefore, the Court directed Pretrial Services to continue to explore whether such a location could be found and such conditions could be developed. Id. at 19. On June 15, 2023, Pretrial Services advised the Court that a satisfactory home assessment had been conducted of a proposed release residence [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

After this proposal was presented to the parties, together with Pretrial Services' recommendation that it appeared workable if coupled with other strict conditions, on June 20, 2023, Defendant filed his Motion for Pre-Trial Release Upon Conditions. ECF No. 17. The government filed an objection, presenting new evidence and requesting that the motion be denied. ECF No. 18. Hearings were held on June 26 and 30, 2023. The government presented additional evidence that was accepted during the hearings. For the reasons stated on the record during the June 30, 2023, hearing and as set out below,¹ the motion for release was denied at the June 30, 2023, hearing and the Order of Detention remains in full force and effect.

I. Findings and Analysis

Supplementing the evidence presented during the underlying hearing that culminated in the issuance of the Order of Detention, the government offered the three exhibits attached to its opposition to the motion for release, which the Court accepted in evidence designated as ECF Nos. 18-2, 18-3 and 18-4. Four additional exhibits were accepted in evidence at the hearings on June 26 and 30; they are marked as Exhibits 1 to 4.² Collectively, as authenticated and explained by the government's proffer, this un rebutted³ evidence establishes that (1) Defendant's active

¹ As required by the Bail Reform Act, 18 U.S.C. § 3142(i)(1), the Court's Order of Detention includes a detailed written statement of findings and reasons. ECF No. 15. After ruling on the motion for release on the record during the hearing, the Court asked if Defendant requested that the Court issue a written decision restating the analysis. Following consultation with counsel, he made that request. In consideration of Defendant's request, this decision memorializes the ruling originally stated on the record.

² Some of the new exhibits are derived from information that the government has just begun to discover based on its still ongoing review of information found on the phone seized at the time of Defendant's arrest. ECF No. 18-1 at 3-4. These exhibits had not yet been located as of the time of the original set of hearings that culminated in the entry of the Order of Detention.

³ The government's new evidence and the government's representations regarding its provenance, authenticity and significance were presented before, on or shortly after June 26, 2023, although Exhibit 4 was not marked until the June 30 hearing. The Court continued the matter to June 30, 2023, to afford Defendant a full opportunity to develop arguments and evidence in rebuttal to this evidence and the government's representations about it. At the June 30, 2023, hearing, Defendant advised the Court that he had nothing to add with respect to the new evidence and relied instead on his argument that, despite the new evidence, conditions could be set.

interest in firearms, and his participation in gang-related communications and in conduct to instigate gang violence has not abated (as he had argued) but has continued to the present, exacerbating significantly the danger (as the government clearly and convincingly established) to any person and the community posed by Defendant's release; and (2) the information that Pretrial Services relied on to recommend the proposed residence was tainted by Pretrial Services' mistaken understandings that the residence [REDACTED]

[REDACTED]

[REDACTED]

At the time of his June 1, 2023, arrest, Defendant had been residing for two years on [REDACTED] at the residence where he was allegedly found in possession of ammunition, two magazines and drug trafficking paraphernalia. ECF No. 15 at 4. For release, Defendant initially proposed to live at his prior residence, [REDACTED]

[REDACTED] The government's new evidence establishes that the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁴ To distinguish him from Defendant, Russell DaCruz is referred to as "Russell." No disrespect is intended.

Because Defendant's [REDACTED]

[REDACTED], I pause for an aside regarding the government's evidence of Russell's criminal history and gang involvement. ECF No. 18-3. This evidence establishes that Russell has been incarcerated at the ACI most recently with a release "at court" as of December 2022; his criminal history includes convictions based on pleas for drug trafficking (two felony convictions), felony conspiracy, domestic violence (misdemeanor) and disorderly conduct (misdemeanor). Id. at 1-7. Russell's Facebook account has a posting from early 2021, that also appears as a header on his Instagram account. Id. at 9-10. This is a photograph that appears to display individuals making gang hand signs that are similar to those in Exhibit 6, presented during the earlier hearing. See ECF No. 15 at 14 (hand signals display "Little East/LE" gang). Importantly, this information regarding Russell was brought to the attention of Pretrial Services after Defendant proposed to work at Russell's barbershop during the hearing held on June 1, 2023; based on this adverse information, that proposal was dropped. By the time the case was formally presented in Court, Defendant was proposing to work at a café and a youth sports organization.

The parties quibble regarding whether the representation that [REDACTED]

[REDACTED] was an intentional falsehood/omission of material information or (as Defendant contends) whether it simply was a misunderstanding that Pretrial Services

inadvertently perpetuated by failing to ask more questions. The government points out that Russell's inappropriateness as an anchor for Defendant's employment in his barbershop had already been exposed so that Defendant's family was well aware that the newly proposed residence might similarly be rejected for the same reason [REDACTED]

[REDACTED] Ultimately, I find that it was not necessary to determine whether Defendant's family members intentionally misled Pretrial Services. What matters is that Pretrial Services' recommendation of release to the new location was based on a material misunderstanding. Therefore, I have given the recommendation no weight and instead have assessed the appropriateness of the new proposed residence based on the facts as presented.

Returning to [REDACTED]

From the ongoing review of Defendant's phone, the government presented Exhibits 1 and 2. Exhibit 1 establishes that, [REDACTED]

[REDACTED]

Collectively, this evidence supports the finding that Defendant's first proposal for release

[REDACTED]

Based on this evidence, I find that, if Defendant were released to the new proposed location, [REDACTED]

display a group of what appears to be pistols/revolvers and long gun(s).⁸ That is, ECF No. 18-4 establishes that Defendant's interest in firearms did not abate (as he argued) after his 2022 felony conviction for carrying a pistol/revolver without a license but rather has grown.

Extremely troubling is Exhibit 3, a short video that the government represents was on Defendant's phone and posted to Defendant's Snapchat account on April 27, 2023. This video depicts a person who appears to be Defendant riding in a car with what appears to be a real handgun in his lap. As the government argues, and I so find, whether or not the firearm is real or operable, this video is a menacing display of Defendant intentionally engaged in conduct for the purpose of projecting himself as a person of violence.

Collectively, this evidence alters my earlier finding that the lack of evidence of affirmative conduct by Defendant to perpetuate gang violence in the period after his 2022 firearm felony conviction meant that conditions of release could be set as long as the residual danger was adequately addressed. See ECF No. 15 at 4 (Pretrial Services directed "to explore whether there may be conditions that would adequately address the danger posed by Defendant's release"). I now find that the government's proof demonstrates that, despite being on probation for the 2022 felonies, Defendant is an individual [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (3) who has an ongoing interest in firearms; and (4) who has a deep-seated distrust of law enforcement. Coupled with the evidence of his criminal history, including his established bail violation in 2020, his near complete lack of

⁸ The government noted that the phone had a factory reset on March 21, 2023, so that law enforcement is still studying the meaning of the "created" dates. Mindful that the dates on images with "created" dates on or prior to the factory reset may not be accurate, I find it significant that, after the factory reset, there are nine gun images on Defendant's phone.

any employment, and his drug trafficking, I find that this evidence demonstrates that Defendant is not going to abide by such conditions that the Court can set to mitigate the danger. That is, I now find that not even the strictest conditions or combination of conditions can adequately address the danger that Defendant's release would pose to any person and the community, including (importantly) the Pretrial Services officer(s) assigned to supervise him.

II. Conclusion

I find by clear and convincing evidence that Defendant's release would pose a danger to the community that cannot adequately be addressed by conditions or any combination of conditions. Based on this finding, Defendant's motion for pretrial release (ECF No. 17) is denied. I further order that the Order of Detention, ECF No. 15, shall remain in full force and effect.

/s/ Patricia A. Sullivan

PATRICIA A. SULLIVAN
United States Magistrate Judge
July 6, 2023